

**114 CSR 65**

**WEST VIRGINIA LEGISLATIVE RULE**

**WEST VIRGINIA INSURANCE COMMISSIONER**

**SERIES 65**

**SELF-INSURANCE POOLS FOR POLITICAL SUBDIVISIONS**

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**TITLE 114**  
**WEST VIRGINIA LEGISLATIVE RULE**  
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**SERIES 65**  
**SELF-INSURANCE POOLS FOR POLITICAL SUBDIVISIONS**

**§114-65-1. General.**

1.1. Scope. -- This rule sets forth the procedural requirements for the creation and regulatory oversight of self-insurance pools.

1.2. Authority. -- This rule is promulgated pursuant to the authority granted by W. Va. Code §§29-12A-16(g) and 33-2-10.

1.3. Filing Date. -- April 16, 2004.

1.4. Effective Date. -- April 16, 2004.

**§114-65-2. Definitions.**

2.1. "Administrator" means the individual, partnership corporation or other entity authorized to serve as a representative of a pool and its members in carrying out the policies of the board of directors and managing the pool's activities.

2.2. "Board" means the board of directors of a pool.

2.2. "Commissioner" means the commissioner of insurance.

2.3. "Contribution" means the amount of payments required of each member in order to fund the pool's obligations under the plan.

2.4. "Liability" means an obligation arising from claims for damages in civil actions for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees.

2.4. "Member" means a political subdivision which has entered into a member agreement and thereby becomes a pool member.

2.5. "Member agreement" means the written agreement executed between each member and the pool which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members and the terms, coverages, limits, and deductibles of the plan.

2.6. "Plan" means the plan of self-insurance offered by the pool to its members as specifically designated in the member agreement.

2.7. “Political subdivision” means any county commission, municipality and county board of education; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; any instrumentality supported in most part by municipalities; any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties cities or towns; a combined city-county health department created pursuant to article two, chapter sixteen of the West Virginia Code; public service districts; and other instrumentalities including, but not limited to, volunteer fire departments and emergency service organizations as recognized by an appropriate public body and authorized by law to perform a government function. “Political subdivision” does not include hospitals of a political subdivision and their employees.

2.8. “Pool” means a joint self-insurance pool organized by two or more political subdivisions for the purpose of providing joint or cooperative action relating to their financial and administrative resources and providing risk management and liability insurance coverage for pool members and their employees for damages in civil actions for injury, death, or loss to persons or property allegedly caused by an act or omission of the political subdivision or any of its employees.

#### **§114-65-3. Establishment of Pools Authorized.**

3.1. Regardless of whether a political subdivision secures a policy or policies of liability insurance, establishes and maintains a self-insurance program, or enters into an agreement for the joint administration of a self-insurance program, the political subdivision may, pursuant to a written agreement and to the extent that it considers necessary, join with one or more political subdivisions to purchase group insurance or to establish and maintain a joint self-insurance pool to provide for the payment of judgments, settlement of claims, expenses, loss, or damages that arise, or are claimed to have arisen, from an act or omission of the political subdivision or any of its employees.

3.2. Two or more political subdivisions may establish and maintain a joint risk-management program, including but not limited to the employment of a risk manager or managers and consultants, for the purpose of preventing and reducing the risks covered by insurance, self-insurance, or a self-insurance pool.

3.3. A joint self-insurance pool is not an insurance company. Its operation does not constitute doing an insurance business and it is not subject to the insurance laws of this State unless otherwise specifically stated herein.

#### **§114-65-4. Criteria for Establishing and Maintaining Self-Insurance Pools.**

4.1. Before a pool may begin to offer coverage to members, the following must be filed with the commissioner:

a. A copy of a financial plan which must set forth:

1. The insurance coverages to be offered by the pool, applicable deductible levels, and the maximum level of claims to be self-insured against;

2. The pool's proposed rates, which should not be excessive, inadequate or unfairly discriminatory taking into account all underwriting, exposure and claims history when pricing any current or prospective pool members. A pool's rates are not subject to prior approval by the Commissioner, however appropriate regulatory action may be taken if he or she determines that the rates are not in compliance with this rule;

3. The amount of cash reserves as are necessary, in the exercise of sound and prudent actuarial judgment, to cover potential pool members and employee liability, expense, loss, and damage, which cash reserves may be funded by the issuance of certificates of participation by the pool and its members and reinsurance; and

4. The amount of aggregate excess insurance or reinsurance coverage to be purchased in the event that the pool's resources are exhausted in a given fiscal period;

b. A copy of a plan of management which describes the governing authority of the pool, which must be a board of directors, and provides the following with regard to the board:

1. The manner in which member contributions to the pool will be determined;

2. The methods for maintaining reserves, levying and collecting assessments for deficiencies, the financing of cash reserves and reinsurance, and disposing of surplus;

3. The basis upon which new members may be admitted to, and existing members may leave or have membership terminated by the pool;

4. The identification of funds and reserves by exposure areas;

5. The manner in which the pool will be administered in the event of termination or insolvency; and

6. Any other provisions that may be considered by the members or the commissioner to be necessary or desirable for the operation of the pool;

c. A copy of the articles of incorporation;

d. A copy of the bylaws of the proposed pool;

e. A copy of the form or forms to be used for the member agreement, which must set forth at a minimum the rights, privileges and obligations of the member and the terms, coverages, limits and deductibles of the plan;

f. A copy of the proposed policy form or forms, which are not subject to prior approval by the Commissioner;

g. Designation of the initial or interim board, at least a majority of which must be pool members, and the administrator, together with pertinent biographical information for each member of the board and for the administrator or the principal officers of the corporation serving as administrator;

h. The address within West Virginia where the books and records of the pool will be maintained at all times;

i. A confirmation of a fidelity bond covering the administrator and its employees in an amount sufficient to protect the pool against the misappropriation or misuse of any monies or securities;

j. A projection of administrative expenses for the first year of operation in a dollar amount and as a percentage of the estimated annual contributions;

k. Proof of payment of contributions by members into a depository account of an amount between \$250,000 and \$500,000 that, in the commissioner's discretion, constitutes sufficient capital; and

l. A composite listing of the estimated annual gross contributions which may, in addition to cash contributions, be made up of proceeds from the sale of certificates of participation in the premium stream of the pool, to be developed by each organizing member of the pool individually and in the aggregate for the pool. Contributions must be based on reasonable assumptions and certified by an actuary as to the sufficiency of the contributions.

m. The authorization given in paragraph 3, subdivision a and paragraph 2, subdivision b of this subsection and in subdivision l of this subsection to issue certificates of participation as a means of providing capital for the pool, establishing adequate reserves and purchasing reinsurance is limited to those political subdivisions that are authorized to issue public debt pursuant to other applicable law.

4.2. Any subsequent revisions to documents filed with the commissioner pursuant to subsection 4.1 of this section must also be filed with the commissioner.

4.3. Member agreements must, at a minimum, disclose the following:

a. The coverages provided;

b. The period of the coverage;

c. The amount of any deductible per claim and in the aggregate;

d. The maximum amount of coverage to be borne by the pool;

e. The contribution amount and dates payment are due for the member;

f. The basis upon which each member's contribution is determined and under what circumstances additional assessments of the members may be made;

g. The circumstances under which a member's participation in the pool may be terminated, including for non payment of contributions or assessments;

h. A description of the excess coverage for the pool as to its coverage per occurrence, coverage per occurrence per person, if appropriate, and in the aggregate;

i. The pool's obligations to provide a defense for the member in the event of a claim; and

j. A prominent disclosure notice that must be signed by a duly authorized officer of the member, which must use the following or substantially similar language:

“The pool is not protected by any West Virginia insurance guaranty association against default due to insolvency. In the event of insolvency, members and persons filing claims against members may be unable to collect any amount owed to them by the pool regardless of the terms of this member agreement. In the event that the pool is in a deficit position, a member may be liable for any and all unpaid claims against the member.”

4.4. The costs of funding the pool may be allocated among the funds or accounts of the pool members on the basis of their relative exposure and loss experience. A pool member is not liable for any amount in excess of amounts payable pursuant to terms of the member agreement for participation in the pool.

4.5. The board must act diligently to limit the pool's exposure on any loss on any one risk or hazard, and may designate as a guideline a percentage of the aggregate annual contributions to which such exposure should be limited.

4.6. The board's responsibilities include, but are not limited to, retaining control of all monies collected and directing the disbursement of such monies; levying upon the members additional assessments in proportionate amounts when needed to supplement the pool's surplus and to assure payment of its obligations; actively collecting delinquent accounts resulting from past due contributions of members and taking appropriate action to declare a delinquent member ineligible for coverage from the pool until such time as the delinquency and cost of collection have been fully recovered; and adopting its own rules and procedures as it considers necessary for the efficient and actuarially sound operation of the pool, provided the rules and procedures are consistent with this rule.

4.7. Any surplus accumulated within a pool's fiscal year, as determined from the annual audited financial statement, may be declared refundable by the board, provided that the refund has been certified by an actuary. Notwithstanding the foregoing, no distribution of the surplus funds may be made earlier than twenty-four months after the end of the fiscal year for which a surplus was declared.

#### **§114-65-5. Authorization of Pools.**

5.1. After review of the documents and information described in section four of this rule, the commissioner may notify the pool that its operation is authorized if he or she determines that the pool meets the criteria set forth in this rule. The commissioner must authorize or decline to authorize the establishment of a pool within 60 days of submission of all documents or information required by this rule. Failure to disapprove the establishment of a pool within such period will be considered approval to establish the pool consistent with the documents and information filed.

5.2. Every pool authorized by the commissioner must file with the commissioner and distribute to pool members on or before March thirty-first of each year an audited statement of its financial condition and business for the year ending December thirty-first of the preceding calendar year. The financial statement must be audited by an independent certified public accountant and verified by the signature and oath of the pool's authorized representative. If a pool fails to file the audited financial statement required by this subsection, the commissioner may have the audit performed. If the audit is performed by the commissioner's staff, it will be at the expense of the pool and all working papers will be confidential and not open for public inspection until the audit is final.

5.3. The commissioner is authorized to monitor as he or she considers necessary the financial solvency of pools, which may include reviewing the pool's rates, to ensure that the pool's liabilities for claims, present and contingent, and other expenses are at no time greater than its assets. If a pool is found by the commissioner to be in a deficit condition based upon the pool's filing required by subsection 5.2 of this section or upon the commissioner's own audit, the pool must file a financial plan acceptable to the commissioner to correct the deficit condition. The commissioner may take appropriate regulatory action whenever in his or her judgment a pool is insolvent or otherwise financially impaired, which may include the withdrawal of the authorization to operate the pool.

5.4. Information regarding the portion of reserves of a pool established to satisfy a specific claim or cause of action is confidential and is not subject to discovery.

5.5. A pool may voluntarily dissolve after presentation to and approval by the commissioner of a plan of dissolution. The plan must provide for the payment of all incurred losses and expenses of the fund and its members, including all incurred but not reported losses, as certified by an actuary, to the extent of the pool's assets. No assets of the pool may be used for any other purpose until payment of all such losses and expenses is provided for. Subject to approval of the commissioner, a pool may merge with another pool if the resulting pool assumes in full all obligations of the merging pools.

5.6. If the commissioner determines that a pool is not in compliance with this rule or with any applicable statute, rule or order of the commissioner, he or she must notify the board of the pool in writing with a description of the non-compliance and a date by which the non-compliance must be corrected or by which a plan for correcting the non-compliance must be filed. If the non-compliance is thereafter not corrected, the commissioner may, after notice and a hearing, withdraw the authorization of approval of the pool or assess a monetary penalty, or both.

**§114-65-6. Investments.**

The commissioner may review, in his or her discretion, the investment portfolio of the pool to determine its financial soundness.